

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

14-MD-2543 (JMF)

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION,

**ORAL ARGUMENT
REQUESTED**

This Document Relates To All Actions
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**APPLICATION FOR APPOINTMENT OF JONATHAN L. FLAXER
OF GOLENBOCK EISEMAN ASSOR BELL & PESKOE LLP
AS AN EXECUTIVE COMMITTEE MEMBER REPRESENTING THE INTERESTS OF
THE ORIGINAL IGNITION SWITCH CLASS MEMBERS**

Jonathan L. Flaxer, a member of Golenbock Eiseman Assor Bell & Peskoe LLP (“**GEABP**”), hereby applies, pursuant to the Court’s Order No. 5 [Dkt. No. 70], for appointment to the Executive Committee, to serve as coordination counsel between the Bankruptcy Court and this Court, and to assist Co-Lead Counsel with discovery and other litigation aspects of these cases, as directed by Co-Lead Counsel, and to otherwise represent the Ignition Switch Plaintiffs’¹ interests on the Executive Committee. Mr. Flaxer, who is the practice chair of GEABP’s bankruptcy department, has over 30 years of experience with complex bankruptcy matters and related litigations, submits that he should be appointed to such position for the following reasons:

Involvement in Ignition Switch Litigation

GEABP, together with co-counsel Wolf Haldenstein Adler Freeman & Herz LLP, commenced the proceedings before the Bankruptcy Court relating to the ignition switch defect by filing a complaint on April 21, 2014 (as amended on May 21, 2014). The complaint, with respect to the July 5, 2009 order of the Bankruptcy Court that approved the transfer of the assets of “Old GM” to “New GM,” seeks a judgment declaring that, in essence, the provisions of that

¹ The “Ignition Switch Plaintiffs” refers to the original economic loss Plaintiffs in this MDL – i.e., the 2.5 million owners and lessors of 2005-2010 Chevrolet Cobalts, 2005-2011 Chevrolet HHRs, 2007-2010 Pontiac G5s, 2003-2007 Saturn Ions, and 2007-2010 Saturn Skys (“**Affected Vehicles**”), whose cars were recalled earlier this year for an Ignition Switch Defect common to those vehicles.

order that New GM now contends shield it from liability to the Ignition Switch Plaintiffs, should not bind the Ignition Switch Plaintiffs due to a lack of due process and fraud upon the Bankruptcy Court. Shortly after GEABP and Wolf Haldenstein filed the declaratory judgment complaint, New GM filed its Motion to Enforce the Sale Order as against the Plaintiffs.

By Scheduling Order dated May 16, 2014, Bankruptcy Judge Gerber, among other things, appointed GEABP as one of the two law firms designated to represent the interests of Plaintiffs in these litigations. Since that time, GEABP, primarily through Mr. Flaxer, has participated extensively in the proceedings before the Bankruptcy Court, including addressing the Court at each such hearing. Mr. Flaxer has likewise participated in direct meetings and conferences with New GM concerning the pending bankruptcy litigation, and has participated in and made substantial concrete contributions to joint meetings among counsel for of the Ignition Switch Plaintiffs as well as during court-mandated meet and confer sessions among New GM and the other counsel designated by Judge Gerber to act on behalf of the main interest groups in the bankruptcy proceedings. Two additional meet and confer sessions are scheduled among the parties during the week of July 28, 2014, and GEABP has submitted to GM hundreds of proposed stipulations of fact in advance of these meetings. GEABP has also prepared to seek discovery from GM as part of the bankruptcy proceedings – as coordinated between Judge Gerber and this Court – to the extent that proves necessary before GEABP submits its brief on the threshold issues that the Bankruptcy Court has directed GEABP and the other interested parties identified by the Bankruptcy Court to address.

In these matters, Mr. Flaxer has worked cooperatively with the other counsel selected by Judge Gerber to represent the various interests, and has consistently been a voice for joint effort and efficiency.

Commitment to Devote Resources

GEABP has in past cases devoted millions of dollars of time without assurance of payment toward the successful prosecution of a case, and it is committed to doing so here. The firm's team, headed by Mr. Flaxer, is willing and able to devote as much time as necessary to fulfill its role efficiently, cooperatively and successfully. In fact, as of July 1, 2014, the firm had devoted 812 hours of lawyer time to this matter on a contingency basis and, as noted, is fully committed to continuing to devote the necessary resources.

Qualifications for Executive Committee Role


Mr. Flaxer possesses the knowledge and experience to provide, as a member of the Executive Committee, substantial and invaluable assistance to Co-Lead Counsel and the putative class. GEABP consists of approximately 55 lawyers, and has a single office in midtown Manhattan. Its practice areas include a litigation department with 14 dedicated lawyers and a bankruptcy department with 4 dedicated lawyers, headed by Mr. Flaxer. Within those departments is a subgroup known as the Complex Business Fraud Litigation Group, of which Mr. Flaxer is a member. That subgroup represents chapter 11 trustees, chapter 7 trustees, FCC receivers and private party-victims in connection with Ponzi schemes, investment fraud, art fraud and similar situations that frequently involve litigation in the Bankruptcy Court. This practice area not only includes lawyers with extensive experience and expertise in investigating allegedly fraudulent and reckless conduct, but also lawyers who have worked cooperatively with regulatory and criminal authorities. In these matters, the group frequently interfaces with expert witnesses and analyzes complex damages issues. As but one recent example, Mr. Flaxer led the GEABP team that represented the chapter 11 trustee in the case entitled *The 1031 Tax Group LLC, et al.*, 07-B-11448, presided over by Judge Martin Glenn of the Bankruptcy Court for the

Southern District of New York. This involved an extensive Ponzi scheme, the operator of which received a 100-year sentence. Upon its retention, the chapter 11 estate had virtually no assets and over \$12 million in administrative liabilities. Through careful investigation and persistent litigation, the trustee was able to make an approximately 70% distribution to the victims of this truly heinous scheme. In this representation, Mr. Flaxer and other lawyers at GEABP worked closely and cooperatively with the United States Attorney's office for the Eastern District of Virginia, as well as with counsel representing putative class representatives in a related class action case in the Northern District of California.

Mr. Flaxer has also been appointed by the Office of the United States Trustee to serve as chapter 11 trustee of *Lehr Construction Corp.*, Case No. 11-10723, pending in the Bankruptcy Court before Judge Sean H. Lane, and of *South Side House LLC*, Case No. 09-43576, pending in the Bankruptcy Court for the Eastern District of New York before Judge Elizabeth S. Stong. Both matters involve allegations of and investigations of criminal and fraudulent conduct.

Mr. Flaxer can effectively apply his experience and expertise to assist in ferreting out any fraudulent or deceptive conduct, as well as in communication and cooperation with regulatory bodies, criminal authorities and the Bankruptcy Court, and hopes for the opportunity to act on behalf of the Plaintiffs' interests in this important matter.

Dated: New York, New York
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